

## **AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement is made and entered into on \_\_\_\_\_ by and between the Town of Paradise, a municipal corporation (“Town”) and \_\_\_\_\_ (“Contractor”).

### **RECITALS**

- A. Contractor is specially trained, experienced and competent to procure and complete Fire Debris Removal services which will be required by this Agreement; and
- B. Contractor possesses the skill, experience, ability, background, certification, and knowledge to provide the services described in this Agreement on the terms and conditions described herein.
- C. Town desires to retain Contractor to render services as set forth in this Agreement.

### **AGREEMENT**

#### **1 SCOPE OF SERVICES.**

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as “Services”) to satisfactorily complete the work required by Town at his/her own risk and expense. Services to be provided to Town are more fully described in Exhibit A entitled “SCOPE OF SERVICES.” All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

##### **1.1 Town Obligations**

All data applicable to the project and in possession of the Town are to be made available to the Contractor.

#### **2 TIME OF PERFORMANCE.**

The services of Contractor shall commence immediately, and shall terminate upon full

project completion.

**3 COMPENSATION.**

Contractor's compensation for all services under this Agreement shall not exceed \$\_\_\_\_\_ and shall be in accordance with the charges set forth in Exhibit "B". In no event shall Contractor's compensation exceed Costs and Fees set forth in Exhibit "B" without the prior approval of the Town Manager.

**4 METHOD OF PAYMENT.**

Contractor shall submit monthly billings, or progress invoices to Town describing the work performed during the preceding month. Contractor's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures and segregated by test methods or by specific tasks. Town shall pay Contractor progress payments no later than 30 days after approval of the monthly invoice by Town staff. Approval of the monthly invoice requires the submittal of certified payrolls when prevailing wages rates are in effect for work done during applicable month. Certified payrolls are to be submitted on a weekly basis and within ten days after the week in question.

**4.1 Retention of Payment**

When payments made by Town equal 95% of the maximum fee provided for in this Agreement, no further payments shall be made until the final work under this Agreement, or for each individual project relating to the Contractor's services has been accepted by the Town.

**4.2 Cost Principles**

The Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal

Acquisition Regulations System, Chapter 1, Part 31 et seq., shall be used to determine the allowability of individual items of cost.

The Contractor also agrees to comply with Federal procedures in accordance with 49 CFR, part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payment has been made to Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., OR 49 CFR, Part 18, Uniform Administrative requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by the Contractor to State.

Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions of this Section.

#### 4.3 Contingent Fee

The Contractor warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State has the right to annul this Agreement without liability, pay on the value of the work actually performed, or in its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### 4.4 Retention Of Records/Audit

1.1.a For the purpose of determining compliance with Public Contract Code Section 10115, et seq. And Title 21, California Code of Regulations, Chapter 21, Section 2500 et. seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 8546.7, the Contractor, subContractors, and the State shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The State, the State Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole

or in part) shall have access to any books, records, and documents of the Contractor that are pertinent to the Agreement from audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions of this Section.

## **5 LABOR COMPLIANCE**

The Contractor shall agree through the contract to comply with the provisions of the California Labor Code. For the purpose of this project, eight hours shall constitute a legal day's work.

The Contractor's attention is directed to section 1815 of the labor code regarding overtime pay and the requirement that a \$25 penalty will be levied for each workman for each calendar day during which the overtime pay provision is not met. The Contractor's attention is also directed to the requirements for travel and subsistence payments to all workers needed to execute the Contract.

Subject to the limitations stated in said section, the Contractor shall comply with the apprenticeship provisions of Section 1777.5 of the Labor Code, including the training and hiring of apprentices.

Attention is directed to Section 7-1.02K(2), "Wages" of the Standard Specifications.

Pursuant to Labor Code Section 1770 et seq, the general prevailing wage rates in the county in which the project work is to be done have been determined by the Director of the California Department of Industrial Relations. These wages are set forth in the General Prevailing Wage Rates for this project, available at Town of Paradise and available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov/DLSR/PWD>. Future effective general prevailing wage rates, which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

**6 EXTRA WORK.**

At any time during the term of this Agreement, Town may request that Contractor perform Extra Work. As used herein, “Extra Work” means any work which is determined by Town to be necessary for the proper completion of Contractor’s services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without prior written authorization from Town.

**7 TERMINATION.**

This Agreement may be terminated by the Town immediately for cause or by either party without cause upon fifteen (15) days written notice of termination. Upon termination, Contractor shall be entitled to compensation for services properly performed up to the effective date of termination.

**8 OWNERSHIP OF DOCUMENTS.**

All reports, plans, studies, documents, and other writings prepared by and for Contractor, in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the Town upon payment to Contractor for such work, and the Town shall have the sole right to use such materials in its discretion without further compensation to Contractor or to any other party. Contractor shall, at Contractor’s expense, provide such reports, plans, studies, documents, and other writings to Town within three (3) days after written request. Contractor shall not be responsible for liabilities, losses, or claims resulting from unauthorized modifications, or reuse other than original intended purpose.

**9 LICENSING OF INTELLECTUAL PROPERTY.**

This Agreement creates a nonexclusive and perpetual license for Town to copy, use,

modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in documents or works of authorship fixed in any tangible medium of expression, including, but not limited to, data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Contractor under this Agreement (“Documents and Data”). Contractor represents and warrants that Contractor has the legal right to license any and all Documents and Data. Contractor makes no such representation and warranty in regard to Documents and Data which may be provided to Contractor by Town. Town shall not be limited in any way in its use of the Documents and Data at any time.

#### 9.1 Confidentiality.

All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor. Such materials shall not, without the prior written consent of Town, be used by Contractor for any purposes other than the performance of the services under this Agreement. Nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Contractor, which is otherwise known to Contractor or is generally known, or has become known, to the related industry shall be deemed confidential. Contractor shall not use Town’s name, seal, or photographs relating to project for which Contractor’s services are rendered, or participate in any publicity pertaining to the Contractor’s services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the

prior written consent of Town.

## 9.2 Contractor's Books and Records.

1.1.a Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, expenditures and disbursements charged to Town for a minimum period of two (2) years, or for any longer period required by law, from the date of final payment to Contractor to this Agreement.

Contractor shall maintain all documents and records which demonstrate performance under this Agreement for a minimum of **three (3) years**, or for any longer period required by law, from the date of termination or completion of this Agreement.

Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the Town Manager, Town Attorney, Town Finance Director, or a designated representative of these officers. Copies of such documents shall be provided to the Town for inspection at Town Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

Where Town has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, Town may, by written request by any of the above named officers, require that custody of the records be given to the Town and that the records and documents be maintained by Town Hall.

## 10 INDEPENDENT CONTRACTOR.

It is understood that Contractor, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the Town. Contractor shall obtain no rights to retirement benefits or other benefits which accrue to Town's employees, and Contractor hereby expressly waives any claim it may have to any such rights.

## 11 INTEREST OF CONTRACTOR.

Contractor (including principals, associates, and professional employees and subcontractors) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of

Contractor's services hereunder. Contractor further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Contractor is not a designated employee within the meaning of the Political Reform Act because

Contractor:

- a. will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the Town or any Town official, other than normal agreement monitoring; and
- b. possesses no authority with respect to any Town decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

## **12 PROFESSIONAL ABILITY OF CONTRACTOR.**

Town has relied upon the professional training and ability of Contractor to perform the services hereunder as a material inducement to enter into this Agreement. Contractor shall have Skip Whaley manage and approve the work of all persons performing professional services under this Agreement. All work performed by Contractor under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Contractor's field of expertise.

## **13 COMPLIANCE WITH LAWS.**

Contractor shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.



**14 LICENSES.**

Contractor represents and warrants to Town that it has all licenses, permits, qualifications, insurance, and approvals of whatsoever nature, which are legally required of Contractor to practice its profession. Contractor represents and warrants to Town that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, certifications, insurance and approvals which are required by the Town for its business.

**15 INDEMNITY.**

Contractor agrees to defend, indemnify and hold harmless the Town, its officers, officials, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therein), arising from its negligent performance, misconduct or omissions relating to the services under this Agreement or its failure to comply with any of its obligations contained in this Agreement, except for any such claim arising from the sole negligence or willful misconduct of the Town, its officers, agents, employees or volunteers.

**16 INSURANCE REQUIREMENTS.**

Contractor, at Town's own cost and expense, shall procure and maintain, for the duration of the Agreement, the insurance coverage and policies as set forth in Exhibit "C" attached hereto.

**17 NOTICES.**

Any notice required to be given under this Agreement shall be in writing and will either be served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated

within 48 hours from the time of mailing if mailed as provided in this section.

If to Town:                Marc Mattox  
                                 Public Works Director  
                                 Town of Paradise  
                                 5555 Skyway  
                                 Paradise, CA 95969

If to Contractor:        Chico Electric  
                                 36 W. Eaton Road  
                                 Chico, CA 95973

**18 ENTIRE AGREEMENT.**

This Agreement constitutes the complete and exclusive statement of Agreement between the Town and Contractor. All prior written and oral communications, including correspondence, drafts, memoranda, and representations are superseded in total by this Agreement.

**19 AMENDMENTS.**

This Agreement may be modified or amended only by a written document executed by both Contractor and Town and approved as to form by the Town Attorney.

**20 ASSIGNMENT AND SUBCONTRACTING.**

The parties recognize that a substantial inducement to Town for entering into this Agreement is the professional reputation, experience, and competence of Contractor. Assignments of any or all rights, duties, or obligations of the Contractor under this Agreement will be permitted only with the express prior written consent of the Town. No subcontractors (other than those listed on Exhibit "A") shall work under this Agreement without the prior written authorization of the Town. If Town consents to such subcontract, Contractor shall be fully responsible to Town for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship

between Town and a subcontractor of the Contractor nor shall it create any obligation on the part of the Town to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. Subcontracts shall physically contain the provisions contained in Federal Form 1273.

**21 WAIVER.**

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

**22 SEVERABILITY.**

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

**23 CONTROLLING LAW VENUE.**

This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Butte.

**24 LITIGATION EXPENSES AND ATTORNEY'S FEES.**

If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

**25 MEDIATION.**

The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are

unable to agree upon a mediator, the dispute shall be submitted to American Arbitration Association (AAA) or its successor in interest. AAA shall provide the parties with the names of five qualified

**26 MEDIATORS.**

The Town and Contractor shall meet to select a mediator by each striking the names of two different proposed mediators and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

**27 EXECUTION.**

This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**28 AUTHORITY TO ENTER AGREEMENT.**

Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

**29 PROHIBITED INTERESTS.**

Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration

contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Town shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Town, during the term of his or her service with Town, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising there from.

**30 EQUAL OPPORTUNITY EMPLOYMENT.**

Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, disability, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. IN WITNESS WHEREOF the parties have cause this Agreement to be executed on the date first written above.

TOWN OF PARADISE

“CONTRACTOR”

By: \_\_\_\_\_

Lauren Gill, Town Manager

By: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

ATTEST:

By: \_\_\_\_\_

Dwight L. Moore, Town Attorney

By: \_\_\_\_\_

Dina Volenski, Town Clerk

///

///

///

///

///

///

///

///

///

**EXHIBIT “A”**

**Scope of Services**

Perform fire debris removal operations under the Butte County Alternative Program for the following sites:

<b>Priorit y</b>	<b>Site Description</b>	<b>Building Description</b>	<b>Address</b>	<b>Sq. Ft.</b>
1	Public Works Shop	Public Works Shop	933 American Way	1,600
2	Fire Station #3	Fire Station #3	1249 Wagstaff Road	3,230
3	RDA Building	Store Front	5456 Black Olive Drive	3,750
4	Quonset Hut	Quonset Hut	5656 Sierra Park Drive	1,120
5	RESIDENCE	RESIDENCE	5733 Pentz Road	2,189

Details on the requirements for each site to be completed under the Alternative Program are provided on the following pages.

**EXHIBIT “B”**

**Compensation**



## **EXHIBIT “C” – Insurance Requirements**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

### ***Minimum Scope of Insurance***

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/87) Coverage Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

### ***Minimum Limits of Insurance***

Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

### ***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions exceeding \$25,000 must be declared to and approved by the Town. At the option of the Town, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the Town guaranteeing payment of losses and related investigations, claim administration and defense expenses.

### ***Other Insurance Provisions***

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Town.

***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A: VII, unless otherwise acceptable to the Town.

***Verification of Coverage***

Contractor shall furnish the Town with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Town or on other than the Town's forms provided, those endorsements conform to Town requirements. All certificates and endorsements are to be received and approved by the Town before work commences. The Town on reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required.